IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.858 OF 2001

Vilas Dhondiba Khatpe,
Convict No.C-9505,
at present in Yeravada
Central Prison,
Pune-411 006. .... Appellant

- Versus -

The State of Maharashtra .... Respondent

Shri B.G. Tangsali, Advocate, appointed for the Appellant.

Shri A.M. Shringarpure, Addl. Public Prosecutor, for the Respondent-State.

CORAM: N.V. DABHOLKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: JANUARY 10, 2006

ORAL JUDGMENT (Per N.V.Dabholkar, J.):

1. The appeal under Section 374(2) of the Code of Criminal Procedure, 1973 impugns the Judgment and Order dated 7-7-1997 delivered by Additional Sessions Judge, Pune in Sessions Case No.411 of 1994. The appellant/original accused is aggrieved, because he is held guilty for the offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer life imprisonment, pay a fine of Rs.500/- in default RI for six months.

2. The prosecution story can be narrated in brief as

follows:

The incident in question took place on 15-1-1994 at about 11:00 a.m. at village Parvadi and more specifically in gat No.819. The village is situated in Tahsil Bhor of Pune District. The land is owned by Baban Keru Limhan, deceased Gulab and other co-sharers from the Limhan family. At the material time, complainant Santosh (son of the deceased), deceased Gulab and Baban were working in the field. They were busy cutting grass. It is the claim of the complainant that there are two Nilgiri (eucalyptus) trees in the land, one Drumstick tree and also one Walva tree. While the three were busy cutting grass, they heard noise of cutting of tree and they proceeded in that direction. The accused Vilas was found peeling the husk of eucalyptus tree by using a sickle (in fact a chopper, sickle is a semi-circular agricultural implement having sharp edge on the inner side of the semi-circular). The panchnama of the scene shows that the weapon with which the accused was peeling the tree was a Koyta i.e. chopper. Deceased Gulab questioned the accused about the said action and the accused angrily retaliated by questioning whether the tree belonged to the three, whether the deceased had planted and irrigated the same. Deceased reminded the accused of the resolution passed by the villagers. It has come in the evidence of PW-2

Baban that the villagers had resolved not to damage or cut the trees in the field. After replying deceased Gulab by angry questions, the accused dropped the chopper, ran towards his residence. He returned with a knife and dealt a blow on the chest of victim Gulab.

Details of the location are brought on record not only by the panchnama of the scene but also during the course of cross-examination of the complainant Santosh Limhan. There is a hillock to the northern side of this land, to the south the land is bounded by a road and there is also a stone wall erected along the other boundary. The houses of the complainant and the accused are to further south of that road.

The accused withdrew the knife from the chest of Gulab and ran away. Gulab collapsed on the spot. PW-2 Baban and other villagers took Gulab to hospital at Nasrapur by a bullock-cart where he was declared dead by the doctor. Consequently, Santosh lodged a report to Bhor Police Station which was treated as FIR and which set the investigation into motion.

It is the claim of the prosecution that the accused was chased and accosted after considerable chase. PW-3 Kanta Yeshwant Limhan has deposed to this effect. It is also said that while attempting to run

away, the accused stumbled on 2-3 occasions and thus suffered minor injuries as also bleeding through the nose.

The prosecution that culminated at the conclusion of the investigation has ended in conviction of the appellant, as described hereinabove.

3. So far as the defence of the accused is concerned, he has admitted many contentions of the prosecution. He has also raised many defences but not with the firmness that is required while pleading right of self-defence of person or property. In fact, in response to question No.2 the accused admitted that gat No.819 of village Parvadi belongs to Limhan family and there are two eucalyptus, one Drumstick and one Walva trees standing in the said land. While answering in the affirmative the question No.3 during the course of the statement under Section 313 of the Cr.P.C., the accused has admitted that on 15-1-1994, at about 10:30 a.m., deceased Gulab, Santosh and Baban had come to the field and they had started agricultural operation i.e. cutting of grass from their agricultural land. He has also admitted that they had approached him while he was peeling the husk of the eucalyptus tree by means of sickle or chopper. According to the accused, the witnesses are deposing against him because they are

related amongst themselves. In fact he has also filed a small written statement as part of his statement under Section 313. In the written statement he has said that the eucalyptus tree which was being peeled off by him was planted and groomed by him. When the prosecution witnesses approached him, Gulab (deceased) was armed with a knife, Santosh (PW-1) and Baban (PW-2) were armed with sickles. There was exchange of words between Gulab and himself on the point of the tree. At this juncture, all three got wild and they assaulted him and they dealt him by kicks and blows. His chopper was lying on the ground. He suffered injuries on his person as a result of beating and also bleeding through nose and mouth. He had questioned them _____ He claims that when Gulab assaulted him by means of knife, he was trying to save himself and in that scuffle Gulab suffered chest injury. He ran away out of fear and he himself presented himself at Narsapur police outpost.

Thus it will be seen that as a result of the defence raised by the accused, presence of the accused himself and couple of prosecution witnesses together with the deceased at the alleged place and time is undisputed. Even the hot verbal exchange and physical violence is admitted and the only region of dispute remains the manner of violence.

4. The prosecution has examined only six witnesses. This includes depositions of Santosh (PW-1) who had reported the matter to the police (FIR Exhibit-16), PW-2 Baban who is an eye-witness and whose presence is undisputed, PW-3 Kanta Limhan who had chased and apprehended the accused after he initially heard the commotion from his residence.

The remaining three witnesses have participated in the investigation. PW-4 Chandrakant Gyanba Jadhav is a panch witness. The prosecution has claimed discovery of the weapon at the instance of the accused and Chandrakant has witnessed the recording of memorandum and discovery of the weapon. Dr. Amol Henre is a Medical Officer. In fact, he had not carried out the post-mortem. The post-mortem was carried out by Dr. Kokane and since Dr. Kokane has expired, his colleague who could identify the hand-writing and signature of Dr. Kokane was examined as PW-5 Dr. Amol Henre. PW-6 API Subhash Zanzane is the investigating officer of the case.

5. On reference to the impugned Judgment, through which we were strenuously taken by the learned counsel for the appellant, as also through the entire evidence led by the prosecution, it can be seen that the learned trial Judge accepted the medical evidence supported by the

ocular account of the incident and taking into consideration the nature of the injury suffered by the victim Gulab, as described in the post-mortem report, has arrived at the conclusion that Gulab met with homicidal death. Although the medical officer who performed the autopsy was not available for evidence, the learned Judge has read details from the post-mortem notes. This is because the hand-writing and signature of Dr. Kokane are proved by PW-5 Dr. Amol and further the fact that the deceased having suffered chest injury is not disputed by the defence but it is admitted while disputing the manner in which the deceased suffered the injury. For the reasons discussed in paragraph 17, the learned Judge preferred the prosecution evidence as against the defence of the accused that the tree about which the dispute arose at the material time belongs to him. In fact, neither party has produced any documentary evidence but the 7 x 12 extract that was available on record having presumptive value under Section 157 of the Maharashtra Land Revenue Code, 1966 was read in evidence by the trial Judge which showed that the land belongs to the prosecution side and the accused has no concern with the same.

For the reasons discussed in paragraphs 18 to 21, the learned Judge found the evidence of complainant Santosh and PW-2 Baban to be reliable and acceptable and

he was not inclined to disbelieve the same merely because they are related to the victim. In fact the learned Judge also drew support from the fact that presence of either of these three persons, namely, witnesses Santosh and Baban and the victim Gulab is not disputed by the accused.

The learned Judge found the defence theory improbable on the touch stone of natural course of human conduct. This is because the accused has claimed that all three were armed with sickles and yet he claimed that they assaulted him only by fists and kicks. The learned Judge was also of the view that the defence as raised in the written statement and as reflects from the cross-examination of the prosecution witnesses was inconsistent.

The learned Judge has discussed the case law pertaining to the right of self-defence of person. According to him, it is settled legal position that the prosecution is not required to explain the injuries on the person of the accused in each and every case and more particularly when such injuries are minor or superficial. The learned Judge also found that the injuries suffered by the accused were minor and superficial, not only that but the prosecution has also explained the cause why the accused must have suffered

the injuries. The learned Judge, therefore, was not inclined to accept the submission of the defence that the prosecution has failed to explain the injuries upon the person of the accused or because of that parallel story propounded by the defence was made plausible. Some support is also drawn from the report of analysis of the clothes and discovery of the weapon at the instance of the accused, as claimed by the prosecution. Having believed the eye-witnesses, the learned Judge has recorded finding of guilty and conviction.

6. Heard counsel Shri B.G. Tangsali for the appellant at length and A.P.P. Shri A.M. Shringarpure for the State. As expected, Advocate Shri Tangsali initially tried to assault the reliability of the witnesses. He has taken us through the cross-examination of all the witnesses but we are convinced that except the witnesses being related to the victim, no other material is available on record which will enable the learned counsel for the appellant to stand on firm footing and assert that they are unreliable witnesses. The incident is admitted to have occurred at about 11:00 a.m. and the first information report is registered at the police station at 1:00 p.m. on the same day. This rules out any possibility of premeditation on the part of the complainant and embellishment of the story by the prosecution side while reporting it to the police

station. As can be seen from the FIR Exhibit-16 and more particularly the paragraph commencing from _____ it can be seen that Santosh and Baban have stuck to the story as was narrated to the police, when they were deposing from the witness box. The most unfortunate part about the defence is apprehension of the accused immediately after the incident, as asserted by PW-3 Kanta and in the deposition of Kanta the defence has not been able to make out any inroad except pointing out that the prosecution has not examined Kanta Sadu who had narrated to PW-3 Kanta that the accused had stabbed Gulab and was running away. It is the claim of Kanta that he chased the accused and chased for a considerable distance. During the chase, the accused had stumbled on 2-3 occasions and consequently he suffered some minor injuries so also bleeding through the nose and mouth. Non-examination of Kanta Sadu who had disclosed some details of the incident to PW-3 Kanta cannot make the evidence of PW-3 unreliable. PW-3 Kanta has stood the test of cross-examination with firmness during the trial.

As is done by the trial Court, after having gone through the cross-examination of all the three, we are inclined to believe Santosh, Baban and Kanta.

Once these eye-witnesses are believed, we do not think that the prosecution requires much support from circumstantial evidence such as the report of the C.A. or the discovery of the weapon at the instance of the accused. Eventually we may only record that the panch witness Chandrakant has supported the prosecution and the assault weapon is recovered in a place although accessible to all, it was hidden under bush and at a location away from the place of occurrence. The recovery therefore can be termed as discovery at the instance of the accused.

We do not need support from the report of the analysis although all the clothes that of the victim as well as that of the accused are stained with human blood of group "O" and the accused is a person with blood group "A". This is because the accused himself has admitted his presence and also a scuffle with the victim.

The trial Court also appears to be justified in recording that there is inconsistency in the defence story suggested in the written statement and as suggested in the cross-examination of the witnesses. As already described hereinabove, in the written statement the accused claimed that Gulab was armed with a knife and Santosh and Baban were armed with sickles. In the

cross-examination of Santosh it is suggested that the deceased and two prosecution witnesses dealt sickle blows to the accused. There is nothing on record to indicate that the accused had suffered any incised injuries by means of a sharp weapon like sickle. The suggestion that deceased Gulab was armed with a knife was emphatically denied by Santosh as also by Baban. Taking an overall view of the evidence, as rendered by PWs 1 to 3 and the defence raised by the accused, finding that the prosecution evidence is corroborated by immediate lodgment of the FIR, corroborated by medical evidence and if the same is not to be read because the autopsy surgeon could not be examined, supported by the inquest Exhibit-11 drawn on the same day at 13:15 hours and the fact that the weapon was discovered at the instance of the accused, we feel that the trial Court committed no error in accepting the prosecution story as compared to the defence raised by the accused. It may not be out of place to say that an attempt was made to raise a defence of right of self-defence but the same was done half-heartedly. It is not the case of the accused that seeing that he was being assaulted by as many as three assailants, he retaliated and dealt a blow to victim Gulab. In fact, what is pleaded in an attempt to plead right of self-defence is that the victim suffered injury accidentally and not intentionally. If at all we are to accept the defence story, it will lead

to such inference. However, as clearly indicated hereinabove, we are inclined to believe the prosecution witnesses and the story as narrated by them.

7. As the second limb of his argument, Advocate Shri Tangsali prayed that this is a case of a single blow and the injury suffered by the victim during a scuffle and therefore the case would fall within the purview of Section 304 Part II of the IPC instead of Section 302 of the IPC. We are unable to agree with the learned counsel for the appellant for the simple reason that the accused had returned home, collected the weapon and then inflicted injury upon the victim Gulab. According to the prosecution story, the scuffle had not erupted immediately following the verbal exchange but the act of the accused inflicting injury upon the victim Gulab was separated by some time, although very little, as much was required by the accused to obtain the weapon from his house located along the southern boundary of the field. The injury, therefore, cannot be said to be unintentional or during the course of exercising right of private defence nor it could be said to be injury suffered during the scuffle with the victim. Hence, the alternative argument submitted by Advocate Tangsali is also found unsustainable.

8. For the reasons discussed hereinabove, the appeal

fails and the same is dismissed.

The Registrar (Judicial) shall ensure supply of certified copy of this Judgment, free of cost, to the appellant in prison through the prison authorities.

Advocate Shri Tangsali was appointed at the cost of the State for prosecuting the appeal on behalf of the prisoner. We quantify his professional charges at Rs.2500/-.

(Smt. V.K.Tahilramani, J.) **(N.V.Dabholkar, J.)**